



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

July 16, 2009

CERTIFIED MAIL

7007 0220 0004 6659 1627

Seattle District, US Army Corps of Engineers
4735 E Marginal Way S
Seattle, WA 98124

RE: Water Quality Certification Order #6929 for U.S. Army Corps of Engineers
Reference #PL-09-03, Hovander Levee Setback and Rehabilitation Project,
Whatcom County, Washington

Dear Sir or Madam:

On June 12, 2009, Seattle District, US Army Corps of Engineers submitted a request to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed Hovander Levee Setback and Rehabilitation project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Erik Stockdale, Unit Supervisor
Northwest Regional Office
Shorelands and Environmental Assistance Program

ES:rrp:cja

Enclosure

cc: Jeffrey Dillon, U.S. Army Corps of Engineers
Jeffrey Kamps, Washington Department of Fish and Wildlife



e-cc: Loree' Randall – HQ
Richard Grout – BFO
Barry Wenger – BFO
Steve Hood – BFO
Susan Meyer – NWRO
Chuck Steele – NWRO
Raman Iyer – NWRO
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A)	ORDER #6929
WATER QUALITY)	Corps Reference #PL-09-03
CERTIFICATION TO)	Hovander Levee Setback and Rehabilitation
Seattle District, US Army Corps of)	Project; Wetlands, Whatcom County,
Engineers)	Washington.
in accordance with 33 U.S.C. 1341)	
(FWPCA § 401), RCW 90.48.120, RCW)	
90.48.260 and Chapter 173-201A WAC		

TO: Seattle District, US Army Corps of Engineers
4735 E Marginal Way S
Seattle, WA 98124

On June 12, 2009, Seattle District, US Army Corps of Engineers, submitted a request to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on June 24, 2009

Setback of the levee includes the following work:

Site 1:

- Construct a new levee for approximately 940 linear feet (LF)
- Realign levee landward behind existing levee
- Install a rock toe trench along the first 300 LF, above ordinary high water mark
- Regrade existing damaged levee section and plant and hydroseed with native grasses for 300 LF
- Remove additional sections of the remaining levee prism beyond the eroded 300-foot section, such that existing riparian vegetation remains intact
- Setback of the levee includes placement of fill in approximately 1.21 acres of wetlands on the landward side of the existing levee. Approximately 3.8 acres of additional floodplain will be established by setback of the levee.

Site 2:

- Backslope fill and regrade along 2,400 LF, for a total of 700 LF in six different locations. Work at Site 2 is confined to the existing levee prism and will include no in-water work.

The project is considered self-mitigating, since the purpose of the project is to provide more floodplain and wetland development for the Nooksack River basin.

The project is located at 5233 Nielson Avenue, on the left bank of the Nooksack River (approximately between river mile 3.5 and 5.7) in Ferndale, Whatcom County, Washington, in wetlands, Sections 32, T. 39N., R. 2E., WRIA 1.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

- A1. For purposes of this Order, the term "Applicant" shall mean Seattle District, US Army Corps of Engineers, and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #6929 and Corps Reference #PL-09-03.

- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 12, 2009. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
- A4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
- A5. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
- A6. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
- A8. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.
- A9. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
- A10. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

B. Conditions for Construction Activities:

General Conditions:

- B1. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project.
- B2. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- B3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- B4. All construction debris shall be properly disposed of in a manner to prevent it from entering the wetlands and/or wetland buffers.
- B5. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- B6. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- B7. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.
- B8. Clean Fill Criteria: Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.

C. Emergency/Contingency Measures:

- C1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- C2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- C3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.

- C4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
- a. Cease operations at the location of the violation or spill.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
 - d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

D. Timing Requirements

- D1. This Order is valid until all compliance requirements in this document have been met.

E. Reporting and Notification Requirement Conditions

- E1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference PL-09-03, Order #6929 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

F. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the “date of receipt” of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the “date of receipt” of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). “Date of receipt” is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology
Northwest Regional Office
Attn: Rebekah Padgett
3190 160th Avenue SE
Bellevue, WA 98008

For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated July 16, 2009 at Bellevue, Washington.



Erik Stockdale, Unit Supervisor
Northwest Regional Office
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**SEATTLE DISTRICT, US ARMY CORPS OF ENGINEERS
HOVANDER LEVEE SETBACK AND REHABILITATION PROJECT
Water Quality Certification Order #6929**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #6929 Section 401 Water Quality Certification for the Seattle District, US Army Corps of Engineers Hovander Levee Setback and Rehabilitation Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company